IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 128 of 2001

WITH

CRIMINAL APPEAL No 95 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BECHAR ALIAS TINU HARJIVAN NANDASANA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 128 of 2001

MR YATIN SONI for Appellant

MRS MANISHA L SHAH, APP for Respondent No. 1

2. Criminal Appeal No. 95 of 2001

MR YATIN SONI for Appellant

MR IM PANDYA, APP for Respondent No.1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 29/07/2003

COMMON ORAL JUDGEMENT

1. These Appeals have been filed by accused of Session Case No.47 of 1995 decided on 22.12.2000 by learned Additional Sessions Judge, Porbandar, convicting the appellants for the charges under Sections 392, 397, 452, 342 and 506 (2) of Indian Penal Code read with Section 135 of the Bombay Police Act.

2. Brief facts leading to filing of these two Appeals reveal that complainant of this case PW-1 Chandrakant Jethalal Joshi filed a complaint before Police at Porbandar at about 1.45 hours on 20.4.1995 that the complainant was residing with his family at Vadia Road, Porbandar. Name of his bungalow is "Ami". He was a Chartered Accountant and his Office is situated at Lingraj Park Road, Porbandar. On 19.4.1995 he had returned from his office in the evening at about 8.30 p.m. In his family, he himself, his wife and his two daughters, in all, 4 members were there. His mother at the time of the incident also was with his family. He had been to his sister's house and returned at 9.20 p.m. to his house. In the drawing room of his bungalow of the above 5 members of the family were watching TV. At that time, four unknown persons opening the doors of drawing room entered into the drawing room. All the four, entering on drawing room, took out knives. In this process, one of the unknown persons was injured by the knife and was bleeding and blood poured down on the ground. All the four unknown persons asked them to sit tight and stated that they were the persons of "bhai", they needed money and asked to hand over whatever they had. The family members of the complainant and the complainant were frightened and sit tight on the sofa. One of the unknown persons from the back pocket of the pant of the complainant snatched the purse of the complainant and took out a sum of Rs.250/-. Thereafter, they said that whatever was kept in the steel cupboard, to be handed over to them. Two unknown persons out of 4, came to near one cupboard and other two went to other cupboard. The complainant was compelled to go to the drawing room to fetch keys of the cupboard. The other keys were kept by his wife and, therefore, the two unknown persons took the wife of the complainant towards the cupboard. On opening of the cupboard, amount of Rs. 75,000/- were taken out by the wife of the complainant and were placed on a bed placed in the said room. The complainant has given account of this Rs.75,000/- in the complaint and in the evidence. His wife was made to sit in the said room and the unknown person took ornaments

from the cupboard. The ornaments, namely, were gold bangles, rings, chain, etc and account of which has been given by the complainant in the complaint as well as in the evidence. The two unknown persons found out a vansi bag and put all extorted material, cash as well as ornaments in the said bag. Thereafter, wife of the complainant was taken to drawing room and unknown persons attempted to tie down all the family members. The unknown persons also took the ornaments worn by the wife of the complainant and mother of the complainant. They also said that they needed an amount of Rs.1 crore for one project and threatened the complainant and his family members that if any of them attempted to file police complaint, all of them would be killed and, therefore, threatened not to inform police. The third unknown person then addressed to the fourth unknown person who was injured while taking out the knife to bring the car, who went out and brought the car. They closed the door from outside while going out of the house. The complainant noticed from window of kitchen that they boarded one more motor car of NE 118 ash colour and had driven the car towards fountain. The complainant came out of the house from the back door and found Compounder Bhavesh of Dr.Devani Hospital sitting on the steps to confirm that the four unknown persons drove the motor car NE 118 towards old well. When these unknown persons left the house of the complainant, it was about 10.20 p.m. After consulting some relatives, the complainant informed the police on phone and thereafter the police visited the residential house of the complainant and recorded the complaint of Chndrakant Jethalal Joshi. All the four unknown persons, according to complainant were talking interse in Gujarati. In complaint, description of each of the unknown persons was given by the complainant. The complaint came to be recorded at Porbandar 'B' Division Police Station. The investigation was handed over to PI Raghuvirsinh Churubha Chudasma, PW-32 and during investigation he found that NE 118 Car of the description given by the complainant was found by the Jetpur Police. The said car came to be seized by the Police. The accused were arrested by P.I. Pathan on 22.4.1995 and were sent to the Investigating Officer. Thereafter the mudammal of the robbery committed was recovered from the accused and was identified by the complainant and witnesses. Test identification parade was also held on 22.4.1995 by the Executive Magistrate, PW-23 Supatlal Devchandbhai and witnesses identified all the four persons to be the persons involved in the said crime.

3. After the investigation was over, a charge sheet came to be filed in the court of learned Magistrate who

committed the case to the Addl. Sessions Judge, Porbandar, who framed charge against the accused vide Exh.1 under sections 341, 342, 392, 397, 398 452, 448, 506(2) and 34 of the IPC as well as under Section 135 of the Bombay Police Act. The charge sheet was submitted against five persons, namely, (1) accused No.1 Dharmesh Himatlal, (2) accused No.2 Diplip @ Mukesh Shambhubhai, (3) acccused No.2 Bechar @ Tinu Harjivan Nandasana, (4) accused No.4 Vipul Hariprasad Pandya and (5) accused No.5 Noorbai W/o Husen Kesar. The charge against accused No.5 Noorbai W/o Husen Kesar was under Section 411 of the Indian Penal Code.

4. On pleading not guilty, prosecution was asked to produce evidence and prosecution produced 34 witnesses and documentary evidence in bulk to prove the case against the 5 accused. After recording of evidence as above said, the learned Judge acquitted accused No.5 Noorbai while convicted accused Nos.1 to 4 for the offence under Section 397 and sentenced each of the accused for 7 years imprisonment read with Section 392. Each of the four accused were also fined for Rs. 7,500/and in default to undergo two years imprisonment. For the charges under Section 452 of the IPC, each of the accused were sentenced to undergo 2 years simple imprisonment and fine of Rs.1,000/- in default to undergo six months imprisonment for the charges proved against the accused Nos. 1 to 4 under Section 342 of the Indian Penal Code. Each of the accused was sentenced to undergo three months imprisonment for the charges proved against each of the accused Nos. 1 to 4 under Section 506(2) of the IPC. Each of them were sentenced to simple imprisonment of two years and fine of Rs. 500/- and in default, to undergo three months imprisonment for the offence under Section 135 of the Bombay Police Act proved against them. The learned Trial Judge has also directed to undergo the sentences concurrently and accused were given benefit of set off under Section 428 of the Criminal Procedure Code. The learned Addl. Sessions Judge also directed an inquiry by the Chief Judicial Magistrate in respect of muddamal.

5. Being aggrieved and dissatisfied by the above said judgment and order of conviction, recorded by the learned Addl. Sessions Judge, Porbandar, in Session Case No. 47/95, original accused No.3 Bechar @ Tinu Harjivan Nandasana, filed Criminal Appeal No. 128 of 2001 while original accused No.4 Vipul Hariprasad Pandya, filed Criminal Appeal No.95 of 2001 through Jail and both the Appeals were admitted by this Court. In Criminal Appeal No. 128 of 2001 learned Advocate Mr.S.M.Soni appeared on

behalf of the appellant while in Criminal Appeal No. 95/2001, learned Advocate Mr.Dipak M.Shah was appointed as Advocate for the appellant because Appeal was preferred from jail. In respect of both these Appeals, learned Advocate Mr. Soni was heard at length and learned APP Mrs. Manisha L. Shah for the respondent State in Criminal Appeal No. 128/2001 and learned APP Mr. I.M. Pandya for the respondent State in Criminal Appeal No. 95 of 2001 were also heard.

6. So far as the appreciation and re-appreciation of the evidence is concerned, material witnesses are complainant PW-1 and his family members; PW-17 Ranjitsinh Polubha Jadeja, a panch of test identification parade, PW-23 Bhupat Devchand, Executive Magistrate, who conducted the test identification parade and Investigating Officers, who investigated the offence and arrested the accused. The other witnesses are mostly panch witnesses.

7. The material evidence is the evidence of PW-1 Chandrakant Jethalal Joshi, Exh.31, PW-2 Madhuriben Chandrakant Joshi, Exh.101 and PW-3 Milindha Chandrakant Joshi at Exh.103. PW-2 Madhuriben is wife of PW-1 and PW-3 Milindha is daughter of PW-1. All the three witnesses in their depositions have stated that how and in what manner the incident occurred at about 1.30 p.m. on 19th of April, 1995. Complainant and his family members were watching TV in their house. The four unknown persons accused No. 1 to 4 entered into the drawing room and took out the knives, by which one of the accused was injured. Their first attempt was to keep the family members sitting in the drawing room and warned to sit tight, labelled themselves with the persons of "bhai" and told that they needed money. They have also demanded whatever the family had from the complainant and his family members. All the three witnesses, above said, further stated that they were frightened and remained seated on the sofa. The cupboard, where moneys were kept, was inside the house and therefore on knowing that the keys of the cupboards were with the wife - PW2 Madhuriben, two accused out of 4, took her to the cupboard, got the cupboard opened and took out the money amounting to Rs.70,000/- and the ornaments of gold. The list and description of which is found from their deposition. While moving out of the house, they closed the door from outside and threatened the complainant and the family members that if any complaint was to be filed, they would be killed and thereafter they ran away in a car of NE 118 make towards old fountain at Porbandar. All the three witnesses PW-1 Chandrakant Jethalal Joshi,

PW-2 Madhuriben and PW-3 Milindhaben have deposed about the above facts. The evidence of these three witnesses was closely scrutinised and scanned. On re-appreciating and carefully examining the evidence of these three witnesses, it clearly appears that the incident had occurred in the manner as deposed by these three witnesses. Now, therefore, the question is whether accused No.1 to 4 were the persons who committed the offence of robbery as narrated by the above witnesses.

8. Learned Advocate Mr. Soni made very strenuous efforts at this juncture and forcefully argued that the only link which connects the accused with the crime is the evidence of test identification parade. It was stated that firstly on 22.4.1995, in the afternoon when the test identification parade has been held, the witnesses had all opportunity to see and identify the accused. My attention was drawn to the deposition of the aforesaid witnesses PW-1, PW-2 and PW-3 who admitted that on 22.4.1995 they visited Police Station on call from Investigating Agency to identify the mudammal. The learned Advocate Mr.Soni therefore forcefully argued that on the said date mudammal was received from the accused from the house of the two accused out of 4, and were brought to the Police Station, and not only that, the accused were also under police custody on that day and, therefore, there were all chances that the witnesses might have noticed the accused in police custody while they visited the Police Station to identify the mudammal. My attention was also drawn to the deposition of Investigating Officer PW-32 Raghuvirsinh, who has stated that he called witnesses to identify the mudammal on 22.4.1995. Learned Advocate Mr. Soni, therefore, argued that witnesses PW-1, 2 and 3 categorically stated that they visited Police Station on 22.4.1995 to identify the mudammal in the earlier part of the day. The Investigating Officer denies the same because before the test identification parade, which was held on noon of 22.4.1995, an opportunity to the witnesses was provided to notice the accused. The learned Advocate Mr. Soni also argued that the test identification parade evidence is of no use to link the accused with the crime. It was argued that in complaint as well as in evidence of prosecution witnesses PW 1, 2 and 3, has specific role to attribute to each of the four accused and a description also given. When test identification parade was held, the role which each of the accused played was not revealed by the witnesses.

9. To consider this contention after appreciating the evidence of PW 1, 2 and 3 who were the victims and

eye witnesses, it is necessary that the test identification evidence as produced by the prosecution is scrutinised. Panch of identification test parade panchnama PW-17 Ranjitsinh Polubha Jadeja, Exh. 137 fully supports the said panchnama. The panchnama is produced at Exh.138. Panch PW-17 Ranjitsinh Polubha in detail stated that how PW-1, 2 and 3 were called in the office of the Executive Magistrate and were taken to the room where the test identification parade was to be held. It is also stated by him that one by one PW-1, 2 and 3 identified four accused from 30 to 35 persons from the persons used as dummies. In all, out of 30 to 35 persons, all the three witnesses, PW-1, 2 and 3 without any hesitation, identified the accused. The other important witness in this aspect is the Executive Magistrate, PW-23 Bhupat Devchand, who is examined at Exh. 138. PW-23 also supports the panchnama of test identification parade and witness Ranjitsinh. The test identification parade was held at 15.15 hours. He managed all the procedure and supervised all the procedure for the test identification. The accused were made to sit in supply branch from the back door of the Chamber of this witness while witnesses were made to sit in other room. There were in all 7 witnesses who were to identify the accused. Panchas were called and made to sit in his chamber. The accused were given opportunity to make changes in their heir style or their clothing, but they did not intend to make any changes. One by one the witnesses were called and PW 1, 2 and 3 were identified by the witnesses. These witnesses were also cross-examined at length by the defence. So far as the test identification parade is concerned, the evidence of PW-17 Raghuvirsinh Polubha Jadeja, PW-23 Bhupat Devchandbhai appears to be natural and corroborating to the evidence of PW 1, 2 and 3. There is no contradiction in the evidence of PW 1, 2 and 3 in respect of test identification parade with the evidence of PW-17 and PW-23. On appreciating this evidence very carefully, it clearly appears that the evidence of PW 1, 2 and 3 PW-17 and PW-23 inspires confidence as to the effect that the test identification parade was held and the accused were duly identified. Only because the witnesses failed to state the role of each of the accused in commission of the crime, would not render this evidence unacceptable. The cumulative effect of the evidence of PW 1, 2 and 3, PW 17 and PW-23 would be the accused No.1 to 4 committed the crime as narrated by witnesses PW 1, 2 and 3. So far as the opportunity to the witnesses to notice the accused before test identification parade is concerned, in fact, there is no such evidence to lead the prima facie conclusion that the witnesses were afforded opportunity

to notice the accused in the earlier part of the day when they were called for identification of mudammal. True it is that, the witnesses say that they were called on 23rd of April, 1995 in the morning to identify the mudammal by the Investigating Officer PW-32, but this is not the contradiction which would lead to believe that the denial on the part of the Investigating Officer in contradiction to PW 1, 2 and 3 is manipulation and suggestive of fact that the Investigating Officer afforded an opportunity to the witnesses to notice the accused. Therefore, on re-appreciating the evidence of these witnesses, the prosecution has proved the offence against accused beyond reasonable doubt. The evidence of other witnesses have been carefully gone through but the case of the prosecution rests on the evidence of these five witnesses and mostly on PW-17 and PW-23, by which the accused are linked with the commission of crime as narrated by PW 1, 2 and 3.

10. The second limb of the argument advanced by learned Advocate Mr. Soni is in respect of, if at all, any offence is proved against the accused, then the question is what offence is proved? My attention was drawn to Section 397 of the Indian Penal Code. It was vehemently urged that even if the prosecution case is taken on its face value, ingredients of Section 397 is not proved against any of the accused. My attention was drawn to PW-1 Chandrakant Jethalal Joshi, PW-2 Madhuriben Chandrakant Joshi and PW-3 Milindha Chandrakant Joshi in this respect. It was argued that even if it is believed that the incident is proved, then also, the conviction is bad under Section 397 because it was not proved beyond doubt by the prosecution that either witnesses were put to danger of grievous hurt or an attempt was made to cause death or grievous hurt to any person. At the most, an offence under Section 392 could be said to have been proved by the prosecution.

11. This contention raised on behalf of the appellants has some substance. On scanning the evidence in this respect again, it appears clearly that neither of all the three witnesses i.e. PW-1, 2 or 3 stated in their depositions any ingredients of Section 397 of the Indian Penal Code. If we peruse Section 397, it clearly reads that at the time of committing robbery or docoity, the offender uses any deadly weapons or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years. With this aid when the evidence was scanned of PW 1, 2 and 3 in this respect, all the three witnesses

have categorically stated that when accused forcibly entered their house, took out the knives. One of the accused was injured also while taking out the knife and they only said that they were persons of "bhai and they needed money". They demanded from the witnesses whatever witnesses had. PW 1, 2 and 3 further deposed that they were frightened and remained seated in the sofa. This is the only evidence by which the Court is required to come to the conclusion (i) whether the accused used deadly weapons; (ii) whether offender caused death or grievous hurt, and (iii) whether offender attempted to cause death or grievous hurt to any person. From the evidence as narrated above, which is before the court, it is amply clear that it is nowhere stated by any of the witnesses i.e. PW-1,2 and 3 that the knife which was taken out by the accused was used to extort money. It is not the evidence of any of the witnesses that any of the accused, put any of the family members in threat or attempt was made by any of the accused to cause grievous injury to any of the person. Nobody was put to threat of life. It is only when according to evidence, the accused were leaving the house of the complainant, they warned the complainant and his family members that if complaint before the Police was filed, then they would be killed. If we appreciate this evidence as a whole, then it becomes clear that during commission of offence, none of the accused put any person in threat or injury or death nor any attempt to cause injury to any person is attributed to any of the accused by any of the PW 1, 2 and 3. The subsequent threat which the witnesses narrated is not during the course of commission of crime but the threat not to inform the Police is the act of the accused while they were leaving the house of the complainant. Meaning thereby that such threat was not given by the accused in the course of commission of crime. The accused only stated that they needed money and they were the persons of "bhai". They even did not use the knives to extort money and gave any threat through this badly weapons to any of the witnesses. The witnesses of course were frightened, but they were frightened because of the sudden entry of unknown persons with knives, who demanded money from the prosecution witnesses No. 1, 2 and 3 without attempting any injury to any person or without even using the deadly weapons which they had. Having deadly weapons in the hand and use of such weapon, as envisaged by Section 397 of the I.P.C., there is subtle difference. Had it been the case of the prosecution that the knife was shown to the prosecution witnesses and had the accused threatened to the prosecution witnesses that if they did not produce whatever they had, they would be killed, then the case

under Section 397 of the IPC could have been said to be proved as to invite the punishment of not less than 7 years. Learned Trial Judge did not consider this aspect of the matter and convicted all the accused under Section 397 of the Indian Penal Code.

12. In view of the above matter, considering the evidence as a whole, though the incident is proved, but the use of deadly weapon or danger to cause injury to any person while committing the offence is not proved by the prosecution. The charges, therefore, under Section 397 against the appellants cannot be said to have been proved by the prosecution beyond reasonable doubt. Even if, the prosecution case is taken as it is, then also, as aforesaid, the conviction of the appellants under Sections 397 cannot be sustained.

13. So far as conviction under Sections, 392, 452, 342 read with Section 135 of the Bombay Police Act is concerned, the same requires no interference in this Appeal so far as appellants are concerned, but then, the learned Advocate Mr. Soni addressed this Court at length in respect of the quantum of punishment awarded to the appellants. Under Section 392 read with Section 397, the learned Trial Judge sentenced the appellant for 7 years imprisonment. As said above, when an offence under Section 397 of the IPC is not proved against the appellants, now the question is what should be the quantum of punishment under Section 392 of the IPC. So far as Sections 452, 342 of the IPC and Section 135 of the Bombay Police Act is concerned, minor punishment has been inflicted by the learned Trial Judge. The accused present appellants are also sentenced to two years imprisonment for the offence proved against them under Section 506(2) of the IPC. Learned Advocate Mr.Soni argued that original accused No.4 Vipul Hariprasad Pandya appellant of Criminal Appeal No. 95 of 2001 is about to complete his sentence. When we refer to the record of the case and jail warrants of the appellants, it is found that appellant Vipul Hariprasad Pandya was under trial from 21.4.1995 to 23.5.1996, again from 4.12.1996 to 20.3.1997. Thereafter, he is in jail right from 12.8.1998 till today. Meaning thereby that if we consider this period, this seven years imprisonment on the part of appellant Vipul Hariprasad Pandya is almost over and is undergoing default sentence awarded by learned Sessions Judge in view of fine while appellant Bechar @ Tinu Harjivan Nandasana - appellant of Criminal Appeal No. 128 of 2001, the record i.e. jail warrant placed at Exh. 204 denotes that during trial he was in jail from 21.4.1995 to 18.2.1996 and thereafter right

from the date of conviction i.e. 22.12.2000 till today he is in jail and if this is considered including under trail period, it comes to about 3 years and seven months. For this appellant i.e. appellant Bechar @ Tinu Harjivan Nandasana - appellant of Criminal Appeal No. 128 of 2001 in the trial court as well as in this Court, it has been submitted that he was aged 22 years when the offence was committed, he completed his Commerce Graduation in jail, he also completed Law Graduation while in jail and for examination, according to learned Advocate, he was released by the Trail Court as well as this Court on temporary bail for few days. It was urged that under what circumstances this appellant committed the crime is required to be taken into consideration in respect of quantum of punishment for Section 392 of the IPC. He was of young age and due to bad company he might have committed the crime. In jail, he educated himself. Not only that but he is associated with the activities of institution of Bhramkumaris. He is also associated with the activities of art of living. He offers his lectures on this subject to various audience in jail. He by heart repents whatever has happened unfortunately. My attention is drawn to the article written by this appellant - Bechar @ Tinu Haarjivan Nandasana about his development in jail and acquiring of Devine knowledge published in a magazine "Gyna Amrut" belongs to the institution of Bhramkumaris. On this ground, it was urged that having regard to the object of punishment being reformative, an opportunity to this appellant be afforded to develop himself in a good progressive citizen of this country, the goal which he would achieve as evident from his jail record as aforesaid.

14. In the above view of the matter, in both the above Appeals, each of the appellants are required to be acquitted from the charges levelled against them under Section 397 of the IPC. Accordingly, they are acquitted of the charges under Section 397 of the IPC and sentence of imprisonment as well as of fine awarded to appellant Vipul Hariprasad Pandya original accused No.4 and Bechar @ Tinu Harjivan Nandasana - original accused No. 3 are set aside. So far as the conviction of the appellants under Section 506 (2), 452, 342 is concerned, the imposition of fine for offences proved against each of the appellants in respect of offence proved against them for the charges under Sections 342 and 506(2), the imposition of fine on each of the appellants is set aside in view of the imprisonment is considered to be sufficient punishment, while charges proved against them under Section 452 is concerned where imposition of fine is imperative, it is considered that default punishment

of six months is undergone by each of the appellants and in this view of the matter, none of the appellants is required to pay fine and, therefore, imposition of fine for Sec. 452 is now set aside.

15. So far as the conviction under Section 392 of the appellants is concerned, each of the appellants Bechar Tinu Harjivan Nandasana and Vipul Hariprasad Pandya instead of sentencing 7 years imprisonment as awarded by the Trial Judge, they are sentenced to the imprisonment for the period for which each of the appellants Bechar Tinu Harjivan Nandasana and Vipul Hariprasad Pandya has undergone. Though the punishment of fine for the charges of Section 392 is imperative, but since one appellant has already undergone 3 and half years of sentence and the other appellant has undergone 7 years imprisonment, in the interest of justice, it is considered that the period which each of the appellants has undergone for charges proved under Section 392 of the IPC, the period of default sentence for imposition of fine should be included so as to comply the mandatory provision of Section 392 to impose fine, and at the same time, while they have undergone the sentence to this extent, none of the appellants is put to any financial hardship. Therefore, no punishment for imposition of fine is awarded for the charges proved against each of the appellants under Section 392 of the IPC.

16. So far as conviction under Section 135 of the Bombay Police Act is concerned, the same is maintained and each of the appellants shall be considered to have undergone the imprisonment of 4 months awarded by the Trial Judge and the default punishment in lieu of fine imposed.

17. In the above view of the matter, Criminal Appeal No.95 of 2001 and Criminal Appeal No. 128 of 2001 are partly allowed as stated below :

1. Appellants Vipul Hariprasad Pandya and Bechar @ Tinu Harjivan Nandasana are acquitted of the charges under Section 397 of the Indian Penal Code and the sentence and punishment awarded by the Trial Court is set aside and each of the Appeals to that extent is allowed.

2. The conviction of the above said appellants and sentencing imprisonment in respect of the offences under Sections 452, 506 (2) and 342 of the Indian Penal Code is maintained and no interference is called for, while the punishment

of imposing of fine awarded for each of the said offences to each of the above named appellants is set aside, and to that extent, the judgment and order of conviction impugned is modified.

3. Appellant Vipul Hariprasad Pandya and appellant Bechar @ Tinu Harjivan Nandasana, while maintaining their conviction for the charges under Section 392 of the Indian Penal Code, are sentenced to imprisonment for the period for which each of the said appellants have undergone, which comes to about 7 years for appellant Vipul Hariprasad Pandya and three and half years for appellant Bechar @ Tinu Harjivan Nandasana, instead of 7 years imprisonment as awarded by the Trial Court. Punishment of fine imposed upon each of the appellants by the Trail Court for the charges proved against them under Section 392 to read with Section 397 of the Indian Penal Code, is also set aside and no punishment of fine is imposed upon any of the appellants i.e. Vipul Hariprasad Pandya and Bechar @ Tinu Harjivan Nandasana, for the charges proved against them under Section 392 of the Indian Penal Code. To that extent, the judgment and order of conviction recorded by the learned Trial Judge is modified.

4. Appellants - Vipul Hariprasad Pandya and Bechar @ Tinu Harjivan Nandasana are directed to be released by the Jail Authority forthwith if any of them is not required to be detained in jail for any other purpose.

18. The remaining directions of the Trial Court in respect of mudammal, in respect of running of imprisonment concurrently and awarding benefit of set off to the appellants are left uninterfered.

19. In above view of the matter, both the above said appeals are partly allowed and to the above extent the judgment and order of conviction is modified.

20. In view of this order, Misc. Criminal Application Nos. 5042/2003 and 5414/2003 filed by appellant Bechar @ Tinu Harjivan Nandasana are disposed of as rejected.

21. D.S. permitted in Criminal Appeal No. 128 of 2001 qua the appellant Bechar @ Tinu Harjivan Nandasana.

(J.R. Vora, J.)

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